

MISC. CIVIL APPLICATION NO.810 OF 1995.

Coram: S.M.Soni & R.R.Jain, JJ.

November 15, 1995.

Oral order (Per Soni, J.)

Applicant prays for necessary action against respondents for non-compliance of the following order:

"The respondents No.1 and 2 are, therefore, directed to take expeditious steps in accordance with law to remove the admitted encroachment on the 6 mtrs. approach road to the 24.4 mtrs. main road of Town Planning Scheme no.14. Respondents No.1 and 2 shall initiate such action according to law as may be necessary in this regard within 30 days from today."

It will be relevant to state that as many as 11 parcels of land were under encroachment. In view of the order of this court, 8 encroachments were removed. Out of the remaining three, two have filed civil suits challenging notices issued by the Corporation under Section 260 of the Bombay Provincial Municipal Corporations Act and one filed Civil Application in the main Special Civil Application (S.C.A.No.12777/93) wherein the above order came to be passed. This is how the state of affairs prevail so far as the remaining three parcels of land are concerned.

Action is proposed under the Contempt of Courts Act for non-compliance of the direction referred to above, more particularly, alleging to be wilful one. One Mr. Nandkishore Parikh, Deputy Estate Officer of respondent No.2 Corporation, in his affidavit dated 1.8.1995 has stated as under:

"I say that there are number of orders passed under Sec.260(2) and they have to be implemented date wise. I say that, therefore, the report was made to the Deputy Municipal Commissioner (UD) for giving priority in this matter for removal. The said request was made on 28th April, 1995, 9th May, 1995, 24th May 1995 and 7th June,

1995. However, the said request of the Department was not accepted by Deputy Municipal Commissioner (UD) for giving priority on 13th June, 1995, on the ground that since there are interim injunction by City Civil Court

with respect to some of the properties, it is not advisable to implement the notice piecemeal. It was also felt that by part removal the whole approach road is not going to be free of encroachment."

Question is whether his opinion not to implement notices in piecemeal can be said to be in defiance of the order of this court. At the cost of repetition, it may be stated that this court directed that respondents No.1 and 2 shall initiate such action according to law as may be necessary in this regard within 30 days from today. However, as alleged by the petitioners, said action though taken is not pursued either effectively or with due diligence within the time. In our opinion, in view of the facts stated in the affidavit, referred to above, it cannot be said that there is any non-compliance much less wilful, of the direction given by this Court. Hence, in our opinion, there is no wilful disobedience of the direction and the notice is required to be discharged.

In the result, petition is rejected. Notice discharged.

15.11.1995.

(S.M. Soni, J.)

(R. R. Jain, J.)